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| In re Application of | : | |
| Ernest C. Chen | : | |
| Application No. 10/692,491 | : | DECISION ON PETITION |
| Filed: October 24, 2003 | : | |
| Attorney Docket No. PD-201150 | : | |

This is a decision on the petition under 37 CFR 1.181 (no fee), filed October 15, 2008, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Notice of Allowance and Fees Due of September 6, 2007, which set a three (3) month statutory period for reply. Accordingly, a reply was due on or before December 6, 2007.

Petitioner states that a timely reply was transmitted via certificate of facsimile transmission on November 20, 2007, which included the following papers: Request for Continued Examination (RCE) Transmittal Form PTO/SB/30, in duplicate, and a Preliminary Amendment. Petitioner has submitted a copy of the previously transmitted correspondence, which bears a certificate of facsimile transmission dated November 20, 2007, which would have rendered the reply timely if received.

The file record does not include the originally submitted papers. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is

dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of September 6, 2007 is hereby withdrawn and the application restored to pending status.

The copy of the reply received with the petition will be accepted in place of the reply shown to have been transmitted by facsimile on November 20, 2007.

Also, in regard to the assertion that the fee for the RCE filed November 1, 2007 should have been charged to applicant's deposit account pursuant to the authorization to charge given March 29, 2004, an authorization to charge post allowance fees must be given after the mailing of the notice of allowance. See 37 CFR §§ 1.25(b) and 1.311(b) and MPEP § 509.01. Thus, the March 29, 2004 authorization could not serve as the basis for charging the deposit account for the November 1, 2007 RCE since the authorization was made before the mailing of the notice of allowance on September 6, 2007.

Telephone inquiries concerning this decision should be directed to Christopher Bottorff at (571) 272-6692.

This application is being referred to Technology Center AU 2616 for appropriate action in the normal course of business on the reply received with petition.



Christopher Bottorff
Petitions Examiner
Office of Petitions